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09/21/21
02:18 PM

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Consider Regulating Telecommunications
Services Used by Incarcerated People

Rulemaking 20-10-002
(Filed October 6, 2020)

APPLICATION FOR REHEARING

OF

NETWORK COMMUNICATIONS INTERNATIONAL CORPORATION

D/B/A NCIC INMATE COMMUNICATIONS (U 6086 C)

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Dated: September 21, 2021

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Pursuant to Public Utilities Code section 1731(b) and Rule 16.1 of the California Public Utilities Commission (the “Commission”) Rules of Practice and Procedure (the “Rules”), Network Communications International Corporation, d/b/a/ NCIC Inmate Communications (U-6086-C)(“NCIC”), by and through its counsel, respectfully submits this Application for Rehearing of Decision 21-08-037, issued on August 23, 2021 (the “Decision”) in the above-referenced proceeding.¹

INTRODUCTION

NCIC respectfully requests that the Commission reconsider the proposed interim rate caps of \$.07 per minute for incarcerated persons communications services (“IPCS”) at any facilities below 1,000 in Average Daily Population (“ADP”). These proposed rates, combined with the Commission’s decision to eliminate the standard, FCC-approved IPCS ancillary fees, will undoubtedly result in operational revenues which are far below NCIC’s cost of providing services in California. An unintended byproduct of this action is that IPCS providers will be required to charge County and City agencies for making IPCS available in order to offset the

¹ This Application for Rehearing is filed within 30 days of the issuance of the Decision, in accordance with Rule 16.1(a) of the Rules.

losses incurred from the proposed caps. Additionally, the IPCS rates adopted in the Decision will lead to the complete elimination of contractual revenue-share practices, which California correctional agencies depend on heavily for their Inmate Welfare Fund (“IWF”) and a variety of inmate-focused programming.

During the Pandemic, many of the city jails in California had to close or only had a few incarcerated persons, and many had their correctional communications contracts cancelled and service terminated because the then-current IPCS providers deemed those contracts financially unviable. NCIC stepped in and installed its system in over 30 of these small facilities, and in doing so, lowered the calling rates to \$.25 per minute where the previous providers were charging as much as \$1.25 per minute for intrastate and local IPCS calls.² To this end, incarcerated individuals (and their friends and families) in California have already been receiving substantial relief as it relates to IPCS, even before the Commission’s intervention.

Previously, NCIC strongly urged Commission to mirror the per-minute rate caps adopted in the recent FCC decision.³ The FCC has conducted extensive data analysis based on actual call and revenue reports that the correctional communications industry has submitted on an annual basis for almost a decade, which resulted in a reasonable and equitable outcome for all parties involved. In fact, it appears that the Commission is duplicating much

² See *Federal Officials Urge Governors to Reduce High Telephone Rates at Jails Throughout Nation*, Orange County Register, October 1, 2020 (attached hereto as Exhibit One).

³ See *Rates for Interstate Inmate Calling Services*, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, FCC 21-60, WC Docket 12-375 (May 20, 2021) (the “Third Report and Order”).

of the work and data productions that the FCC has already conducted and would save thousands of staff-member hours to follow the lead of the FCC and the many states mirroring the new FCC rate caps.

Further, NCIC seeks rehearing regarding the Commission's decision to eliminate certain intrastate IPCS ancillary service fees, while capping the third-party financial transaction fees at \$6.95 per transaction. In adopting the \$6.95 per transaction cap, the Commission followed the approach taken by the FCC in the Third Report and Order. NCIC has submitted a Petition for Reconsideration with the FCC,⁴ and NCIC urges the California PUC to reconsider because NCIC believes these third-party financial transaction fees were already egregious at \$3.00 per call. At the same time, the complete elimination of certain ancillary fees will have a significant, negative impact on NCIC's and other providers' ability to provide IPCS in California, and will likely lead to the reduction of available funds for California IWF activities at local and county correctional institutions.

In light of these concerns, NCIC requests rehearing of the Decision with respect to the IPCS per-minute rate of \$0.07 for local and intrastate IPCS, and the Commission's decision to prohibit certain ancillary service fees, and cap others at \$6.95 per transaction.

⁴ See *Petition for Reconsideration of NCIC Inmate Communications*, WC Docket 12-375 (filed Aug. 27, 2021).

DISCUSSION

I. Standard of Review

Public Utilities Code Section 1757.1(a) establishes the grounds for requesting the rehearing of a Commission decision. In particular, rehearing is appropriate where it can be shown by the party, *inter alia*, that:

- The order or decision of the commission was an abuse of discretion (1757.1(a)(1));
- The commission has not proceeded in the manner required by law (1757.1(a)(2));
- The decision of the commission is not supported by the findings (1757.1(a)(4));
- The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution (1757.1(a)(6)).

As discussed in more detail below, rehearing of the Decision is appropriate because the Commission's decision to cap intrastate IPCS rates at \$0.07 per minute was an abuse of discretion and ignored evidence in the record indicating that the adopted rate was below the cost of providing service by certain IPCS providers. The Commission is required to consider evidence provided by parties to the proceeding, and, by ignoring or otherwise not giving full consideration of the arguments provided by NCIC regarding the per-minute IPCS rate, the Commission failed to comply with the Public Utilities Code and the Rules. Additionally, the Commission abused its discretion and failed to give the requisite credit and attention to the evidence provided by NCIC that the Commission's elimination of certain ancillary fees would have a significant, negative impact on local and county correctional authorities.

The combined effect of the Commission's decision to (i) adopt a below-cost per-minute cap at \$0.07 and (ii) eliminate certain ancillary fees, will force IPCS providers to either eliminate

services to its customers, or charge additional fees to local and county correctional authorities in order to maintain the current level of service. Neither result serves the interests of incarcerated persons, their families or the correctional facilities, especially because the Commission was provided evidence of these potential effects prior to the adoption of the Decision.

II. The Commission Abused Its Discretion and Adopted a New Cap on Intrastate IPSC Below Cost of Providing Service.

In the Decision, the Commission set an interim IPSC rate cap for all prisons and jails in California at \$0.07 per minute. In formulating this rate cap, the Commission used the new agreement between Global Tel*Link and California Department of Corrections and Rehabilitation (“CDCR”) as a baseline. That agreement established the rate for the state prison system at \$0.025 per minute, and applies to the CDCR’s incarcerated persons, which total more than 120,000 incarcerated persons, spread across 91 facilities in California. Unfortunately, the Commission apparently missed that in addition to the \$.025 per minute, that Global Tel*Link was also permitted to charge a single-call transaction fee of \$.99 per call on family members who accepted a single call using the Advance Pay One Call product, outlined on the final pages of the CDCR contract and on Global Tel*Link’s online “User Guide for Inmate/Ward Families and Friend”.⁵ The use of the CDCR’s contract as a baseline was in error, and should be reversed.

In particular, the IPSC call volume originating from CDCR’s adult facilities was estimated at 237,316,204 minutes per year, which, at \$0.025 per minute plus a possible \$.99 per call

⁵ See https://www.gtl.net/wp-content/uploads/2019/06/GTL-CDCR_User_Guide_Inmate_Ward_Families_and_Friends.pdf (last visited September 20, 2021).

transaction fee, will generate revenue estimated at \$6,180,405.10.⁶ The economies of scale arising from more than 230 million minutes per year is significantly different than anticipating the minutes per year from county or local jails. The Commission ignored this significant factor by asserting that the cost of serving jails is not “more than double the cost of providing call services to the California state prison system.”⁷

Moreover, the Commission failed to consider that the CDCR contract establishes rates for sending (i) emails (\$0.05), (ii) photographs (\$0.05), (iii) e-cards (\$0.05), (iv) Video Grams (\$0.05); and (v) Video Visitation (\$0.20 per minute), which is estimated to generate an additional \$4.8 million dollars annually, and music/movie subscription services estimated to generate an additional \$7.5 million dollars annually.⁸ Clearly, GTL’s offer of \$0.025 per minute plus the \$.99 transaction fees (generating \$6.1 million in gross revenue) was directly tied to its anticipated generation of an additional \$12.3 million in gross revenue arising from the other services to be provided under the CDCR contract.

As such, it was fundamentally unfair, and an abuse of the Commission’s discretion, to use the CDCR-contracted rate of \$0.025 per minute (along with not including \$.99 transaction fee) as the baseline for its calculation of its IPCS per-minute rate cap for all correctional institutions in the state of California. As noted in its comments in this proceeding, NCIC recently assumed IPCS contracts in more than 30 local correctional institutions that most certainly will not generate the

⁶ See CDCR Contract ID C5610009, available at: [LPA Contract Details \(ca.gov\)](#) (Tab 3 attached hereto as Exhibit Two).

⁷ *Decision*, pg. 52.

⁸ *See Exhibit One*.

minutes of use, nor the income arising from the CDCR contract with GTL. Even if the Commission is correct that the cost of providing IPCS to local jails is just double the cost of providing service to CDCR, the Commission ignores the clear “loss leading” benefits arising from the large minutes of use, and the other services included in the CDCR contract that will certainly offset the \$0.025 per-minute rate.⁹

NCIC supported the Commission’s staff recommendation that the Commission adopt the rates established in the FCC’s Third Report and Order on an interim basis,¹⁰ and urges rehearing on the adoption of the \$0.07 per minute rate for all prisons and jails in California.

III. The Commission’s Decision Regarding Ancillary Fees Is in Error.

The Commission also rejected NCIC’s suggestion that it adopt the ancillary service fee caps established in the FCC’s Third Report and Order. Significantly, the Decision eliminated ancillary service fees for automated transactions, live operator funding, and paper billing statements. In doing so, the Commission rejected the Staff Proposal, finding that “[t]here are no indications that the current uncapped ancillary fees charged in connection with IPCS are just and reasonable.”¹¹

⁹ Similar issues arise from the Commission’s reliance on the recent changes to the IPCS per-minute rates by the Illinois Department of Corrections, New Jersey Department of Corrections, and large jail systems in New York City and Dallas County, Texas. *See Decision*, pg. 53. The Commission reliance on large prison and jail systems with populations of more than 1,000 incarcerated persons ignores the reach of the Commission’s actions on small county and local jails that will never experience similar economies of scale.

¹⁰ *See Decision*, pg. 42.

¹¹ *See Decision*, pg. 73.

While NCIC agrees that unregulated ancillary fees have been a “burden” to families in the past,¹² the Commission ignored the successful steps taken by the FCC to reign in ancillary fees, and rejected the Staff Proposal to adopt the current FCC caps on an interim basis. This decision was an abuse of discretion, and should be reversed on rehearing.

The Commission determination to eliminate certain ancillary fees was based on the fact that other commercial calling services do not charge for similar services. This determination ignores the fact that commercial calling services involve largely unregulated businesses that compete directly for customers. In the absence of such competition in the IPCS industry, the FCC studied cost data spanning from 2013 to 2020 to arrive at interim rate caps for ancillary fees adopted in the Third Report and Order. On the other hand, the Commission rejected the reasoned determination made by the FCC, and relied only on a comparison to competitive commercial service offerings.

By capping the intrastate IPCS rate at \$0.07 per minute, and eliminating certain ancillary service fees, NCIC is concerned that the public will suffer greater harm than that caused by the FCC-mandated ancillary service fee caps. For example, NCIC reasonably anticipates that:

- IPCS providers would be forced to eliminate access to a live account representative to fund accounts or inquire about rates;
- IPCS providers would be forced to require family members to use their website for all information about IPCS services, FAQs and to maintain their accounts;
- These lower rates would eliminate the ability to pay cost-recoveries (commissions) to the correctional agencies, compounding their already devastated budgets due to the Pandemic, basically eliminating the Inmate Welfare Funds;

¹² *Id.*

- These lower rates would require IPCS providers to pass on overhead costs to the correctional agencies that have traditionally been borne by the IPCS provider, such as bandwidth charges, maintenance, and installation costs;
- IPCS providers will be forced to restrict the number of phones, as well as the available calling hours/minutes per day to encourage incarcerated persons to use non-regulated services, such as video calling, text messaging and email; and
- IPCS providers would have to require separate accounts for regulated and unregulated services, in order to eliminate ancillary fees on phone accounts and but not on unregulated product accounts, therefore causing additional confusion for family members.

Rather than eliminate the afore-mentioned ancillary service fees, NCIC urges the Commission to maintain the ancillary service fees studied and approved by the FCC, and cap the single-call ancillary service fees at \$3.00.

CONCLUSION

NCIC appreciates the Commission's efforts to regulate IPCS in the state of California, as we all can agree that it has been long overdue. It has expressed support for many of the recommendations made by the Commission's staff, and has urged that the Commission move, on an interim basis, to adopt the Federal Communications Commission's regulatory approach in the August 2021 Third Report and Order.

However, NCIC respectfully requests rehearing on the adoption of a per-minute rate cap that is far below the cost of providing service to local and county correctional institutions. The use of a state-wide prison system contract as a baseline for the per-minute IPCS rate cap was an abuse of discretion and ignored the record in the proceeding that demonstrated higher costs for IPCS in county and local jails. Similarly, the elimination of certain ancillary service fees was in error, and must be reconsidered.

Instead, NCIC requests that the Commission follow the lead of the FCC in order to provide consistency in ICS rates and fees, but also focus on eliminating the abuses caused by IPCS providers charging the \$3.00 transaction fee on single calls, which appeared to be one of the main sources of rate complaints during the open workshop held by the PUC. To that end, NCIC urges the Commission to:

- Cap IPCS rates at:
 - Large State Prisons at the current rate of \$.025 per minute;
 - Non-state facilities (County, Local and Private) with populations over 1,000 incarcerated persons at \$.16 per minute;
 - Small facilities below 1,000 incarcerated persons at \$.21 per minute.
- Keep the same funding fees mandated by the FCC except ban them on single-calls and only allow them on account deposits. Some providers cap deposits at \$50 so they can create more funding events with fees. As a result, the PUC may want to specify the IPCS provider will allow up to \$100.00 to be deposited at a single funding event;
- Eliminate the wording that allows pass-through of third-party transaction fees, so providers will not be adding credit card transaction fees on top of the funding fees, thereby saving the incarcerated and their families another 3%-5% on transactions; and
- Require IPCS providers to give the first two calls for free to expedite release of the incarcerated, thereby lowering the rates to \$.00 per minute on those two vital calls and won't require a credit/debit card to be accepted.

Granting limited rehearing on these limited matters will eliminate confusion between FCC and California regulations while both agencies take further steps to ensure that IPCS rates and fees are just, reasonable and fair.

Respectfully submitted,

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September 21, 2021

EXHIBIT ONE

Federal officials urge governors to reduce high telephone rates at jails throughout nation

In-state rates in California can reach as high as \$26.25 for each 15 minutes



Jail phone rates in California are among the highest in the nation, says the Federal Communications Commission, which wants to cap rates at about \$3 for a 15-minute intrastate call. (Photo by H. Lorren Au Jr., ORANGE COUNTY REGISTER/SCNG)

By [TONY SAAVEDRA](#) | tsaavedra@scng.com | Orange County Register

PUBLISHED: September 29, 2020 at 5:56 p.m. | UPDATED: September 30, 2020 at 3:37 p.m.

Talk is cheap — except if you're in a Southern California jail, where a 15-minute in-state phone call can cost up to \$18.75.

Elsewhere around the United States, [telephone rates](#) in state can exceed \$20 for 15 minutes.

The rates are so high that the Federal Communications Commission this month reached out to the nation's governors to control in-state phone charges. The FCC recommends a cap of \$3.15 per 15 minutes for prepaid jail calls using a credit card.

Under federal law, the FCC has no jurisdiction over what phone vendors charge for in-state calls. That is the responsibility of state and local lawmakers. Jail calls outside of state cost about 16 cents per minute and the FCC is trying to get that even lower.

“We know that keeping inmates and their loved ones connected reduces recidivism and helps children with incarcerated parents. And given that most inmates are incarcerated in the same state where their families live, the rates charged for intrastate calls are critically important,” FCC Chairman Ajit Pai said in a prepared statement.

The COVID-19 pandemic has forced many jails to suspend visitations, making telephone communication even more crucial, officials say. Eighty percent of the jail and prison phone calls are in state.

The National Association of Regulatory Utility Commissioners joined with the FCC this month in writing a letter to the National Governors Association asking for the local rates to be lowered.

California Gov. Gavin Newsom’s office did not return repeated calls for comment.

GTEL, one of the largest provider of jail phone services, serving 2,300 facilities and 1.8 million inmates in 50 states, declined to comment.

At the Clovis city jail, a 15-minute in-state phone call costs \$26.25, the highest rate in California and one of the highest in the nation.

Next in California come the city jails in Buena Park, Corona, Costa Mesa, Hawthorne, Hermosa Beach, Inglewood, Manhattan Beach, Newport Beach and Westminster — all with a phone rate of \$18.75 for 15 minutes. That amounts to \$1.25 per minute.

The phone rates at most of the large county jails in Southern California are in the \$3 range. In San Bernardino County, it is \$6 per 15 minutes in state, according to the FCC.

In Costa Mesa, the jail phone service recently changed from Legacy Inmate Communications to NCIC inmate communications, said police spokeswoman Roxi Fyad. With the vendor switch, rates dropped to 25 cents per minute or \$3.75 per 15 minutes, Fyad said. A percentage of the phone charge goes to a special fund to purchase supplies for inmates, Fyad said.

Additionally, she said, inmates get three free phone calls before the charges kick in.

At the Corona city jail, Sgt. Chad Fountain said the phone contract with Legacy has been terminated to reduce costs. Fountain didn’t know whether new rates would be negotiated with a yet-to-be chosen vendor. He said inmates can use the police station phone to make free calls.

In Hermosa Beach, the jail used phone vendor Legacy for eight years. The company gave the city 60 percent of call revenue — a total of \$4,905 from 2015 to 2020. In June, Hermosa Beach changed vendors to NCIC, which has lower rates and pays the city 20 percent of call revenue, said city spokesman Mick Gaglia. Inmates initially get three free phone calls.

The new rate is \$3.75 for a 15-minute, interstate call, just a little over what the FCC recommends.

Newport Beach also used Legacy, but switched in June over to Cen-Tex Pay Telephone Co. City spokesman John Pope said Newport Beach gets about \$300 a month from the phone revenue, but spends it on newspapers and small amenities for the inmates. The new rate is \$7.50 for a 15-minute in-state call — more than twice the recommended rate.

“Newport Beach regularly evaluates our contracts and pricing to ensure alignment with comparable cities and we will do so with this contract as well,” Pope said.

Other cities did not return requests for comment. Legacy could not be reached.

Inmate phone cost per 15-minute intrastate call

Buena Park	\$18.75
Corona	\$18.75
Costa Mesa	\$18.75*
Hawthorne	\$18.75
Hermosa Beach	\$18.75*
Inglewood	\$18.75
Manhattan Beach	\$18.75
Newport Beach	\$18.75**
Westminster	\$18.75
Alhambra	\$17.25

* Now \$3.75.

** Now \$7.50

EXHIBIT TWO

California Department of Corrections and Rehabilitation

Cost Workbook

Respondent:

Global Tel*Link Corporation (GTL)

Offender Communications

Telephone Call Rates and Charges

Item Description	Proposed Fee to Offender, Family, or Friend (per minute)	Anticipated Annual Call Volume (minutes)	Gross Revenue Generated
Adult - Local, IntraLATA, InterLATA, Interstate	\$0.025	237,316,204	\$5,932,905.10
Youth - Local, IntraLATA, InterLATA, Interstate	\$0.000	3,002,134	\$0.00
International Calls (Adult and Youth)	\$0.070	146,571	\$10,259.97
			\$5,943,165.07

Other Offender Communication

Item Description	Proposed Fee to Offender, Family, or Friend (per transaction)	Anticipated Annual Transactions	Gross Revenue Generated
Each E-mail	\$0.050	73,450,000	\$3,672,500.00
Each Photograph	\$0.050	13,510,000	\$675,500.00
Each e-Card	\$0.050	2,120,000	\$106,000.00
Each Video Gram	\$0.050	1,410,000	\$70,500.00
Each Video Call (i.e. Video Visitation) per minute	\$0.200	1,800,000	\$360,000.00
			\$4,884,500.00

Other Charges:

**Prepaid Account One-time Transaction Fee	\$0.00	120,000	\$0.00
***Advance Pay Call Transaction Fee - per use	\$0.99	250,000	\$247,500.00

**Prepaid Account One-time Transaction Fee is a one-time fee to setup a prepaid account and is a nonrecurring fee. Once a prepaid account is established, the customer will not be required to pay this fee again when adding funds to the Prepaid Account.

***Advance Pay One Call Transaction Fee is an automated payment method fee (via debit or credit card) used with a prepaid calling option that does not have a minimum balance requirement and does not require setting up a Prepaid account.

California Department of Corrections and Rehabilitation			
Cost Workbook			
Respondent:	Global Tel*Link Corporation (GTL)		
Offender Services and Entertainment			
Item Description	Proposed Fee to Offender, Family, or Friend (per Transaction)	Anticipated Annual Transactions	Gross Revenue Generated
Each e-Book	\$0.00	740,000	\$0.00
Each Game Puchase	\$0.00	400,000	\$0.00
Each Printed Page (B/W)	\$0.05	500,000	\$25,000.00
Each Printed Page (Color)	\$0.25	300,000	\$75,000.00
OPTION 1:			
Each Song Purchase		18,850,000	\$0.00
Each Movie Rental		1,500,000	\$0.00
OPTION 1 Total			\$100,000.00
OPTION 2:			
	Proposed Fee to Offender, Family, or Friend (Monthly Subscription Fee)	Anticipated Annual Subscriptions	
Music Subscription Services	\$7.99	750,000	\$5,992,500.00
Movie Subscription Services	\$1.99	750,000	\$1,492,500.00
OPTION 2 Total			\$7,585,000.00
Access to CDCR and Third Party Application and Content	No Charge		
Internal Communication/Messaging	No Charge		
CDCR-Initiated Messaging	No Charge		
Hotline Communications/Reporting	No Charge		

California Department of Corrections and Rehabilitation

Cost Workbook

Respondent:

Global Tel*Link Corporation (GTL)

Tablet Accessories

Item Description	Proposed Cost to Offender, Family, or Friend
Earbuds	\$3.49
Keyboards	N/A at this time
Screen Protectors	N/A at this time
Replacement Charger	\$7.99
Enter Item Description	

California Department of Corrections and Rehabilitation	
Cost Workbook	
Respondent:	Global Tel*Link Corporation (GTL)
Other Additional Items	
Item Description	Proposed Cost to Offender, Family, or Friend
Podcasts	\$2.49 (30-day subscription)
Premium Audio Books	\$5.49 (30-day subscription)
Streaming News and Sports	\$0.75 (30-day subscription)
Streaming Media	\$3.49 (30-day subscription)
Internet Radio without playlists, caching or download	\$5.49 (30-day subscription)
Youth International Rates	\$0.00
Voicemail Rates	\$0.00
Free Calling - Prior to PIN deployment	2 free days per month
Free Calling - After PIN deployment*	15-minutes of free calling per 2 week per individual
Free Video Calling - After PIN deployment*	15-minutes of free calling per 2 week per individual
Indigent Messaging Program	5 free messages per week per indigent individual

*Inmates not able to accumulate minutes or accrue more than 15-minutes of free calling. Contractor shall ensure that 15-minute credits (or the amount used) are credited every 2 weeks (i.e. use it or lose it).